

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

---

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF NEW YORK, ET AL.

Plaintiff-Interveners,

v.

AMERICAN ELECTRIC POWER SERVICE  
CORP., ET AL.,

Defendants.

---

OHIO CITIZEN ACTION, ET AL.,

Plaintiffs,

v.

AMERICAN ELECTRIC POWER SERVICE  
CORP., ET AL.,

Defendants.

---

Civil Action No. C2-99-1182

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Terence P. Kemp

UNITED STATES OF AMERICA'S  
SECOND AMENDED COMPLAINT

Civil Action No. C2-99-1250  
(Consolidated with No. C2-99-1182)

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges:

### NATURE OF THE ACTION

1. This is a civil action brought against American Electric Power Service Corporation ("AEP Service Corp."), Indiana Michigan Power Company ("Indiana Michigan"), Ohio Power Company ("Ohio Power"), Appalachian Power Company ("Appalachian Power"), Cardinal Operating Company ("Cardinal"), and Columbus Southern Power Company ("CSPC") (collectively "Defendants" or the "AEP Companies") pursuant to Sections 113(b)(2) and 167 of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7413(b)(2) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-7492, the nonattainment New Source Review ("NSR") provisions of the Act, 42 U.S.C. §§ 7501-7515, and the federally-approved and enforceable Indiana, West Virginia, Ohio, and Virginia State Implementation Plans ("SIPs").

2. Numerous times, the Defendants significantly modified, and thereafter continuously operated, their electric generating units at the: (1) Tanners Creek coal-fired electric generating power plant in Indiana; (2) Muskingum River, Cardinal, and Conesville coal-fired electric generating power plants in Ohio; (3) John E. Amos, Kammer, Mitchell, and Philip Sporn coal-fired electric generating power plants in West Virginia; and (4) Clinch River coal-fired electric generating power plant in Virginia, without first obtaining appropriate permits authorizing this construction and/or operation of modifications at these units, and without installing the best available control technology or achieving lowest achievable emissions rate, as applicable, to control emissions of sulfur dioxide,

nitrogen oxides, and particulate matter, required by the Act, the Act's implementing regulations and the Indiana, Ohio, West Virginia, and Virginia SIPs.

3. As a result of Defendants' continued operation of these plants following these unlawful modifications, and in the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from these plants. Defendants' violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing these Defendants to install and operate the pollution control technology to control these pollutants, or to attain the lowest achievable emissions rate as appropriate, in conjunction with orders sought by the United States in similar cases involving other coal-fired electrical power plants in the Midwest and southern United States concurrently with the filing of the original complaint in this case, will produce an immediate and dramatic improvement in the quality of air breathed by millions of Americans. Such an order, in conjunction with others sought in other jurisdictions, will reduce illness, improve visibility, and protect national parks, wilderness areas, forests, lakes, and streams from further degradation due to the fallout from acid precipitation, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

4. Sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), and particulate matter when emitted into the air can each have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual SO<sub>2</sub> emissions and 30 percent of NO<sub>x</sub> emissions in the United States. SO<sub>2</sub> interacts in the atmosphere to form sulfate aerosols, which may be

transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols comprise 25 percent of the inhalable particles and, according to recent studies, high levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

5. Nitrogen oxides have numerous adverse effects on health and welfare.  $\text{NO}_x$  reacts with other pollutants and sunlight to form ground level ozone, which scientists have long recognized as being harmful to human health and the environment. Ozone can cause decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. In addition, ozone causes damage to vegetation. Nitrogen dioxide (" $\text{NO}_2$ "), one type of  $\text{NO}_x$ , is a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to  $\text{NO}_2$  exposure.

6.  $\text{SO}_2$  and  $\text{NO}_x$  interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet, "acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it damages trees at high elevations. Acid precipitation accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural

heritage. SO<sub>2</sub> and NO<sub>x</sub> gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and have a significant adverse impact on public health. In this civil action, and in other civil actions filed concurrently with the original complaint, the United States intends to reduce dramatically the amount of SO<sub>2</sub> and NO<sub>x</sub> that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States in this and similar lawsuits is imposed, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country including several national parks and wilderness areas. Stress to our forests from Maine to Florida will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO<sub>2</sub> and NO<sub>x</sub> will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

7. Particulate matter (“PM”) is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of PM. Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also reduce visibility and damage man-made materials. Reductions in PM illegally released into the atmosphere by the Defendants and others will significantly reduce the serious health and environmental effects caused by particulate matter in our atmosphere.

## JURISDICTION AND VENUE

8. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

9. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Defendants reside in this District, because many of the violations occurred in this District, and because three of the facilities that are the subject of the Second Amended Complaint, the Muskingum River, Conesville and Cardinal Plants (described below), are located in this District.

## NOTICES

10. EPA issued Defendants Notices of Violation on four occasions, and in each instance, EPA provided copies of these Notices to the appropriate State in accordance with Sections 113(a)(1) and (b)(1) of the Act, 42 U.S.C. §§ 7413(a)(1) and (b)(1). First, on November 2, 1999, U.S. EPA issued a Notice of Violation to the Defendants for violations of the Act and the Indiana, Ohio and West Virginia SIPs at their Tanners Creek Plant in Indiana, the Cardinal, Conesville, and Muskingum River Plants in Ohio, and the Mitchell and Philip Sporn Plants in West Virginia. Second, on November 22, 1999, U.S. EPA issued a Notice of Violation to Defendants American Electric Power Service Corp., Ohio Power Company, and Appalachian Power Company for violations of the Act and the West Virginia and Virginia SIPs at the John E. Amos, and Kammer Plants in West Virginia, and the Clinch River Plant in Virginia. Third, on November 30, 1999, U.S. EPA issued two Notices of Violation to Defendants American Electric Power, Ohio Power Company and/or Buckeye Power for violations of the Ohio SIP at the Muskingum River and Cardinal Plants.

Fourth, on June 18, 2004, U.S. EPA issued a Notice of Violation to American Electric Power Service Corp., Indiana Michigan Power Company, Cardinal Operating Company, Columbus Southern Power Co., Ohio Power Company, Appalachian Power Company, and Central Operating Company for violations of the Act, and the Indiana, Ohio and West Virginia SIPs at the Tanners Creek Plant in Indiana, the Conesville, Cardinal, and Muskingum River Plants in Ohio, and the John E. Amos, Kammer, and Philip Sporn Plants in West Virginia.

11. The 30-day period between issuance of the fourth and last Notice of Violation and the commencement of this amended civil action, as required by Section 113 of the Act, 42 U.S.C. § 7413, has elapsed.

12. Notice of the commencement of this amended action has been given to the States of Indiana, Ohio, West Virginia, and Virginia, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

#### THE DEFENDANTS

13. Defendant American Electric Power Service Corporation (“AEP Service Corp.”) is a New York Corporation that is headquartered and does business in Ohio. AEP Service Corp. is an operator of each facility that is the subject of this Second Amended Complaint.

14. Defendant Indiana Michigan Power Company, d/b/a/ American Electric Power (“Indiana Michigan”), is an Indiana Corporation, which owns and, along with AEP Service Corp., is an operator of the Tanners Creek coal-fired electric power generation plant (“Tanners Creek Plant”) in Dearborn County, Indiana. Indiana Michigan is a subsidiary of American Electric Power Company, which resides in Columbus, Ohio.

15. Defendant Ohio Power Company, d/b/a American Electric Power (“Ohio Power”), is an Ohio Corporation that owns and, along with AEP Service Corp. and Cardinal, is an operator of the Cardinal coal-fired electric power generation plant (“Cardinal Plant”) in Jefferson County, Ohio. Ohio Power owns and, along with AEP Service Corp., is an operator of the Muskingum River coal-fired electric power generation plant (“Muskingum River Plant”) in Washington and Morgan Counties, Ohio. Ohio Power also owns and, along with AEP Service Corp., is an operator of the Mitchell coal-fired electric power generation plant (“Mitchell Plant”) in Marshall County, West Virginia and the Kammer coal-fired electric generating plant (“Kammer Plant”) in Marshall County, West Virginia. Ohio Power, along with Appalachian Power Company, is an owner and, along with AEP Service Corp. and Central Operating Company, an operator of the Philip Sporn coal-fired electric power generation plant (“Sporn Plant”) in Mason County, West Virginia.<sup>1/</sup> Ohio Power, along with Appalachian Power, is an owner and, along with AEP Service Corp., an operator of the John E. Amos coal-fired electric power generation plant (“John E. Amos Plant”) in Putnam County, West Virginia. Ohio Power is a subsidiary of American Electric Power Company, which resides in Columbus, Ohio.

16. Defendant Cardinal Operating Company (“Cardinal”) is an Ohio corporation. Cardinal Operating Company, along with AEP Service Corp., is an operator of the Cardinal coal-fired electric power generation plant (“Cardinal Plant”) in Jefferson County, Ohio. Cardinal is jointly owned by Ohio Power and Buckeye Power, Inc.

---

<sup>1/</sup> Central Operating Company (“Central”) was a West Virginia corporation. Central, along with AEP Service Corp. and Appalachian Power, was an operator of the Sporn Plant in Mason County, West Virginia; however Central was dissolved as a corporate entity on November 30, 2000.

17. Defendant Appalachian Power Company, d/b/a American Electric Power (“Appalachian Power”) is a Virginia corporation. Appalachian Power, with Ohio Power, is an owner and, along with AEP Service Corp. and Central Operating Company, is an operator of the Philip Sporn coal-fired electric power generation plant (“Sporn Plant”) in Mason County, West Virginia. Appalachian Power owns and, along with AEP Service Corp., is an operator of the Clinch River coal-fired electric power generation plant (“Clinch River Plant”) in Russell County, Virginia. Appalachian Power, along with Ohio Power, is an owner and, along with AEP Service Corp., is an operator of the John E. Amos coal-fired electric power generation plant (“John E. Amos Plant”) in Putnam County, West Virginia. Appalachian Power is a subsidiary of American Electric Power Company, which resides in Columbus, Ohio.

18. Defendant Columbus Southern Power Company (“CSPC”) is an Ohio Corporation that is an owner and, along with AEP Service Corp., an operator of the Conesville coal-fired electric power generation plant (“Conesville Plant”) in Coshocton County, Ohio. CSPC is a subsidiary of American Electric Power Company, which resides in Columbus, Ohio.

19. Each Defendant is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

#### STATUTORY BACKGROUND

20. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

A. The National Ambient Air Quality Standards

21. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of U.S. EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such “criteria” pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires U.S. EPA to promulgate national ambient air quality standards (“NAAQS”) requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, U.S. EPA has identified and promulgated NAAQS for NO<sub>2</sub>, SO<sub>2</sub>, PM (now measured in the ambient air as PM-10), and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.

22. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

23. At times relevant to this Second Amended Complaint, the Tanners Creek Plant was located in an area that had been classified as attainment or unclassifiable for one or more of the following pollutants: SO<sub>2</sub>, NO<sub>x</sub>, NO<sub>2</sub>, ozone, PM, and PM-10. From 1978 through 1996, the Tanners Creek Plant was located in an area, Lawrenceburg Township, Dearborn County, Indiana, that had been classified as nonattainment for the criteria pollutant total suspended particulates (“TSP”).

24. At times relevant to this Second Amended Complaint, Units 1 through 4 at the Muskingum River Plant were located in an area, Washington County, Ohio, that had been determined

to be attainment or unclassifiable or unclassified for the criteria pollutant NO<sub>2</sub>. From 2004 to the present, Muskingum River Units 1-4 have been located in an area designated as nonattainment for ozone, but prior to 2004, Muskingum River Units 1-4 were located in an attainment, unclassifiable, or unclassified area for ozone. From 1978 to 1994, Units 1-4 were located in an area that had been designated as nonattainment for SO<sub>2</sub>, but since 1994, Muskingum River Units 1-4 are located in an attainment area for SO<sub>2</sub>. From 1978 to 1994, Muskingum River Units 1-4 were located in a nonattainment area for PM (secondary TSP). From 1991 to the present, Units 1-4 have been located in an unclassifiable area for PM-10.

25. At times relevant to this Second Amended Complaint, Unit 5 at the Muskingum River plant was located in an area, Morgan County, Ohio, that had been determined to be: (1) attainment, unclassifiable, or unclassified for the criteria pollutant NO<sub>2</sub> and ozone. From 1978 to 1994, Unit 5 was located in an area that had been designated as nonattainment for SO<sub>2</sub>. Since 1994, Muskingum River Unit 5 has been located in an attainment area for SO<sub>2</sub>. From 1978 to 1980, Muskingum River Unit 5 was located in a nonattainment area for PM (secondary TSP). From 1981 to 1994, Unit 5 was located in an area designated as unclassifiable for PM (secondary TSP). Since 1991, Muskingum River Unit 5 has been located in an area designated as unclassifiable for PM-10.

26. At times relevant to this Second Amended Complaint, the Philip Sporn and Clinch River Plants were located in areas that had been determined to be attainment or unclassifiable for the criteria pollutants SO<sub>2</sub>, NO<sub>2</sub>, TSP, PM, and ozone.

27. At times relevant to this Second Amended Complaint, the Kammer and Mitchell Plants were located in areas that had been determined to be attainment or unclassifiable for the criteria pollutants SO<sub>2</sub>, NO<sub>2</sub>, and ozone. From 1978 to September 19, 1983, the Kammer and Mitchell Plants

were located in a nonattainment area for PM (primary TSP). From September 19, 1983 until the present, the area was designated as attainment for primary and secondary TSP; from November 15, 1990 until the present, the area where the Kammer and Mitchell Plants are located has been designated as unclassifiable for PM-10.

28. At times relevant to this Second Amended Complaint, the Cardinal Plant was located in an area, Jefferson County, Ohio, that had been determined to be attainment, unclassifiable or unclassified for the criteria pollutant NO<sub>2</sub>. The Cardinal Plant has been located in a nonattainment area for ozone since 2004, and during the time between October 1978 to March 1995. However, from March 1995 to 2004, Jefferson County was classified as attainment for ozone. From 1977 through 1994, the Cardinal Plant was located in an area determined to be nonattainment for TSP. The Cardinal Plant was located in a nonattainment area for the criteria pollutant PM-10 from 1991 to 2001, and since 2001, the area has been re-designated as an attainment area for PM-10. From 1977 to 1999, the area where the Cardinal Plant is located was designated as nonattainment for SO<sub>2</sub>. Since 1999, the Cardinal Plant has been located in an attainment area for SO<sub>2</sub>.

29. At times relevant to this Second Amended Complaint, the Conesville Plant was located in an area, Coshocton County, Ohio, that had been determined to be attainment, unclassifiable or unclassified for the criteria pollutants NO<sub>2</sub>, ozone and TSP/PM-10. From 1979 to 2000, the Conesville Plant was located in a nonattainment area for the criteria pollutant SO<sub>2</sub>; however, since 2000, the area has been in attainment for SO<sub>2</sub>.

30. At times relevant to this Second Amended Complaint, the John E. Amos Plant was located in an area, Putnam County, West Virginia, that had been determined to be attainment, unclassifiable or unclassified for the criteria pollutants NO<sub>2</sub>, SO<sub>2</sub>, primary and secondary TSP and

PM-10. From 1978 to December 9, 1981, the John E. Amos Plant was located in an area determined to be nonattainment for the criteria pollutant ozone. From December 9, 1981 to November 15, 1990, Putnam County was designated as attainment for ozone, but during November 15, 1990 to September 6, 1994, the area was re-designated as moderate nonattainment. Since September 6, 1994, the area was determined to be attainment for the criteria pollutant ozone.

B. The Prevention of Significant Deterioration Requirements

31. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the “PSD program.”

32. Sections 110(a)(2)(C) and 161 of the Act, 42 U.S.C. §§ 7410(a)(2)(C) and 7471, require states to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

33. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by U.S. EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

34. If a state does not have a PSD program that has been approved by U.S. EPA and incorporated into the SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

1. PSD Provisions of 40 C.F.R. §§ 52.21(b)-(w) set forth in the Indiana, Ohio, and Virginia SIPs (prior to March 23, 1998)

35. On August 7, 1980, U.S. EPA disapproved Indiana's proposed PSD program and incorporated by reference the PSD regulations of 40 C.F.R. §§ 52.21 (b) through (w) into the Indiana SIP at 40 C.F.R. § 52.793. 45 Fed. Reg. 52,676, 52,741 (Aug. 7, 1980). Accordingly, U.S. EPA promulgated the PSD regulations of 40 C.F.R. §§ 52.21(b) through (w) into the Indiana SIP at 40 C.F.R. § 52.793, and delegated to Indiana partial authority to implement the federal PSD program incorporated into the Indiana SIP. 46 Fed. Reg. 9580, 9583 (Jan. 29, 1981). On March 3, 2003, U.S. EPA conditionally approved Indiana's PSD SIP provisions, which became effective on April 2, 2003. 68 Fed. Reg. 9892 (March 3, 2003).

36. On August 7, 1980, U.S. EPA disapproved Ohio's proposed PSD program. 45 Fed. Reg. 52,676, 52,741 (August 7, 1980). Accordingly, U.S. EPA promulgated the PSD regulations of 40 C.F.R. §§ 52.21(b) through (w) into the Ohio SIP at 40 C.F.R. § 52.1884, and delegated to Ohio the authority to implement the federal PSD program incorporated into the Ohio SIP. 46 Fed. Reg. 9580 (Jan. 29, 1981). Prior to August 7, 1980, U.S. EPA administered the PSD program in Ohio, applying the regulations at 40 C.F.R. § 52.21, originally promulgated on December 5, 1974 and as amended thereafter. The regulations appearing at 40 C.F.R. § 52.21 were incorporated and made a part of Ohio's SIP. 40 C.F.R. § 52.1884 (1998). Ohio submitted a request to U.S. EPA for approval of Ohio Administrative Code ("OAC") Chapters 3745-31-01 through 3745-31-20 into the Ohio SIP on March 1, 1996 as its construction program. Ohio subsequently submitted to U.S. EPA additional

revisions to the Ohio SIP. On October 10, 2001, Ohio's PSD program was conditionally approved by U.S. EPA. 66 Fed. Reg. 51,570 (Oct. 10, 2001). Further revisions to OAC Chapter 3745-31 were submitted by Ohio on July 18, 2002. On January 22, 2003, U.S. EPA approved Ohio's PSD SIP provisions, 3745-31-01 through 3745-31-20, which became effective on March 10, 2003. 68 Fed. Reg. 2909 (Jan. 22, 2003).

37. On August 7, 1980, U.S. EPA disapproved Virginia's proposed PSD program. 45 Fed. Reg. 52,676, 52,741 (August 7, 1980). Accordingly, U.S. EPA promulgated the PSD regulations of 40 C.F.R. §§ 52.21(b) through (w) into the Virginia SIP at 40 C.F.R. § 52.2451, and delegated to Virginia the authority to implement the federal PSD program incorporated into the Virginia SIP. *Id.* On March 23, 1998, U.S. EPA approved Virginia's proposed PSD program, withdrew from the Virginia SIP the federal PSD requirements and Virginia's authority to implement the federal PSD requirements, and granted Virginia authority effective April 21, 1998 to issue PSD permits under its SIP-approved program. 63 Fed. Reg. 13,795, 13,797 (March 23, 1998).

38. As set forth at 40 C.F.R. § 52.21(i) (2002), any "major stationary source" in an attainment or unclassifiable area that intends to construct a "major modification" must first obtain a PSD permit.

39. Under the PSD program, "major stationary source" is defined, *inter alia*, as a fossil fuel-fired steam electric plant of more than 250 million British thermal units (Btu) per hour heat input which emits or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a) (2002). SO<sub>2</sub>, NO<sub>2</sub>, NO<sub>x</sub> and PM are pollutants regulated under the Act. 40 C.F.R. §§ 50.4 - 50.11 (2002) and 42 U.S.C. § 7511a(f).

40. Under the PSD program, a “major modification” is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2) (2002).

41. “Net emissions increase” means “the amount by which the sum of the following exceeds zero: (a) [a]ny increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21) (2002)] from a particular physical change or change in method of operation at a stationary source; and (b) [a]ny other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21) (2002)] at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i) (2002). A “significant net emissions increase” means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: NO<sub>x</sub>, 40 tons per year; SO<sub>2</sub>, 40 tons per year; and PM, 25 tons per year. 40 C.F.R. § 52.21(b)(23)(i) (2002).

42. If a source determines that a proposed project would result in an emissions increase above the significance threshold, the PSD rules provide for consideration of other contemporaneous emission increases and decreases at other units at the source, which may result in lowering the “net” emission increase. The PSD regulations, at 40 C.F.R. § 52.21(b)(3)(i) (2002), allow a source to factor out of the emission increase “[a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” “Contemporaneous” is defined as the period from five years prior to the change up to the date that the unit undergoing the physical change or change in the method of operation becomes operational again and begins to emit the pollutants. 40 C.F.R. § 52.21(b)(3)(ii) and (viii) (2002). “Creditable” decreases in the

contemporaneous five year period, at 40 C.F.R. § 52.21(b)(3)(ii) (2002), are those decreases that are “federally enforceable.”

43. Under the PSD program, “construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.” 40 C.F.R. § 52.21(b)(8) (2002). *See also* 42 U.S.C. § 7479(2)(C) (“construction” includes the “modification” of the source or facility).

44. As set forth in Section 164 of the Act, 42 U.S.C. § 7475(a)(4) and 40 C.F.R. § 52.21(j) (2002), a source in an attainment or unclassifiable area with a major modification must install and operate best available control technology (“BACT”), as defined in 40 C.F.R. § 52.21(b)(12) (2002) and 42 U.S.C. § 7479(3), for each pollutant regulated under the Act for which the modification would result in a significant net emissions increase of such pollutant. 42 U.S.C. § 7475(a)(4).

45. As set forth in 40 C.F.R. § 52.21(m) (2002), a PSD permit application must be accompanied by an analysis of ambient air quality in the area.

46. The PSD program also requires any person who wishes to modify a major source in an attainment area to demonstrate, before construction commences, that the construction will not cause or contribute to air pollution that is in violation of any national ambient air quality standard or the maximum allowable increase in emissions of that pollutant. 40 C.F.R. § 52.21(k) (2002).

47. As set forth in 40 C.F.R. § 52.21(n) (2002), the owner or operator of a proposed source or modification must submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21(n) (2002).

2. West Virginia PSD Provisions set forth in the West Virginia SIP

48. West Virginia's PSD program is set forth in the West Virginia Code of State Rules ("W.Va. Code State R."), W.Va. Code State R. tit. 45 § 14 and 40 C.F.R. §§ 52.21 and 52.2520 (1997, superseded). The West Virginia PSD program is part of the West Virginia SIP and was approved by U.S. EPA on April 11, 1986. 51 Fed. Reg. 12,517 (April 11, 1986).

49. Pursuant to the Act, the West Virginia SIP provides that no construction or major modification and operation thereof of a major stationary source can occur without first reporting the construction and/or major modification to the Director of the West Virginia Department of Environmental Protection and/or obtaining a permit. W.Va. Code State R. tit. 45 §§ 14-1 and 14-6.

50. W.Va. Code State R. tit. 45 § 14 prohibits the construction or major modification in any area in West Virginia which has attained the national ambient air quality standards or is unclassifiable unless a permit has been obtained and other requirements of W.Va. Code State R. tit. 45 § 14 have been satisfied.

51. The term "major stationary source" is defined, *inter alia*, as fossil fuel-fired steam electric plants of more than 250 million British thermal units (Btu) per hour heat input. W.Va. Code State R. tit. 45 § 14-2.30a.

52. The term "construction" means "any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." W.Va. Code State R. tit. 45 § 14-2.17.

53. The term "major modification" is defined as "any physical change in or change in the method of operation of a major stationary source which results in a significant net emission increase of any regulated pollutant." W.Va. Code State R. tit. 45 § 14-2.27. SO<sub>2</sub>, NO<sub>x</sub>, PM/PM-10, NO<sub>2</sub> and

ozone are “regulated pollutants” under the West Virginia SIP. W.Va. Code State R. tit. 45 §§ 13-2.20(a) and (b).

54. The term “commence” as applied to construction of a major stationary source or a major modification means the owner and/or operator has the necessary pre-construction approvals or permits and, either has: (1) begun or caused to begin actual on-site construction of the source, to be completed within a reasonable time; or (2) entered into contracts, that cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction at the source within a reasonable time. W.Va. Code State R. tit. 45 § 14-2.14.

55. “Net emissions increase” means “the amount of emissions by which the sum of the following exceeds zero: (a) [a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) [a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” W.Va. Code State R. tit. 45 § 14-2.34.

56. “An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs not more than five (5) years prior to the date on which the construction on the particular change commences nor later than the date on which the increase from the particular change occurs.” W.Va. Code State R. tit. 45 § 14-2.34.b.1.

57. An increase or decrease in actual emissions is creditable only if the two following conditions are satisfied: (1) “[t]he increase or decrease in actual emissions has not been relied upon by the United States Environmental Protection Agency in issuing a permit pursuant to 40 C.F.R. 52.21 or by the Director in issuing a permit pursuant to this rule and such permit is in effect on the date on which the increase in emissions from the particular change occurs; and (2) the increase or

decrease in actual emissions of particulate matter, sulfur dioxide, or nitrogen oxides which occurred prior to the applicable minor source baseline date was required to be considered and calculated in determining the amount of maximum allowable increases remaining available.” The creditable decreases in emissions must be federally enforceable and enforceable by the Director at and after the time that the actual construction on the particular change begins. W.Va. Code State R. tit. 45 §§ 14-2.34.b.2.A, 14-2.34.b.2.B, and 14-2.34.b.4.B.

58. “Significant net emission increase” means a rate of emissions that would equal or exceed any of the following rates for the following pollutants: NO<sub>x</sub>, 40 tons per year; SO<sub>2</sub>, 40 tons per year; and PM-10, 15 tons per year. W.Va. Code State R. tit. 45 § 14-2.46.

59. The West Virginia SIP provides that any person constructing, relocating or making a major modification to a stationary source within a designated attainment or unclassifiable area of the State of West Virginia must submit a permit application to determine whether the proposed construction or modification will comply with the PSD rules. W.Va. Code State R. tit. 45 § 14-6.1.

60. Any person proposing a major modification of a stationary source shall apply the best available control technology for each regulated pollutant for which the proposed major modification will result in a significant net emissions increase from the source. W.Va. Code State R. tit. 45 § 14-7.

61. Violations of West Virginia’s SIP requirements are subject to federal enforcement under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

### 3. Ohio’s PSD Provisions set forth in the Ohio SIP after October 10, 2001

62. Ohio’s PSD program is set forth in OAC Chapter 3745-31-01 through 3745-31-20 and 40 C.F.R. §§ 52.21 and 52.1919(A)(4)(i)(A). 66 Fed. Reg. 51,570 (Oct. 10, 2001). The Ohio PSD

program is part of the Ohio SIP and was conditionally approved by U.S. EPA on October 10, 2001, and fully approved on January 22, 2003. 68 Fed. Reg. 2902 (Jan. 22, 2003).

63. Pursuant to the Act, the Ohio SIP provides that no construction or major modification and operation thereof of a major stationary source in an attainment area can occur without first complying with the requirements set forth in OAC Chapter 3745-31-01 through 3745-31-20 and obtaining a valid permit to install. OAC Chapter 3745-31-11 and OAC Chapter 3745-31-13(a).

64. OAC Chapter 3745-31-13(C) states that the requirements of OAC Chapter 3745-31-10 through 3745-31-20 shall apply to any major modification in any area in Ohio which has attained the national ambient air quality standards or is unclassifiable.

65. The owner or operator of a proposed major modification shall submit all information necessary to perform an analysis or make a determination required under the Ohio SIP PSD rule. OAC Chapter 3745-31-12(a). A pre-application analysis is also required to determine whether a major modification would result in a significant net emissions increase of a criteria pollutant. OAC Chapter 3745-31-14(B)(2).

66. The term “major stationary source” is defined as any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act. OAC Chapter 3745-31-01 through 3745-31-08; 40 C.F.R. Part 51, App. S, II.A.4(i). OAC Chapter 3745-31-01(WW)(1) and (2)(a)(i).

67. The term “construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.” OAC Chapter 3745-31-01(x).

68. “Major modification” is defined by the Ohio SIP as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. OAC Chapter 3745-31-01(VV).

69. The term “commence” as applied to construction of a major stationary source or a major modification means the owner and/or operator has the necessary pre-construction approvals or permits and, either has: (1) caused to begin actual on-site construction of the source, to be completed within a reasonable time; or (2) entered into contracts, that cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction at the source within a reasonable time. 3745-31-01(T)(1) - (2).

70. “Net emissions increase” means “the amount by which the sum of the following exceeds zero: (a) [a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) [a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” OAC Chapter 3745-31-01(DDD)(1) and (2).

71. “Significant” net emission increase means a rate of emissions that would equal or exceed any of the following rates for the following pollutants: NO<sub>x</sub>, 40 tons per year; SO<sub>2</sub>, 40 tons per year; and PM, 25 tons per year. OAC Chapter 3745-31-01(WWW)(1).

72. “Contemporaneous” is defined as the period from five years prior to the change up to the date that the unit undergoing the physical change or change in the method of operation becomes operational again and begins to emit the pollutants. OAC Chapter 3745-31-01(DDD)(3)(a). “Creditable” decreases in the contemporaneous five year period are those decreases that are “federally enforceable.” OAC Chapter 3745-31-01(DDD)(3)(e)(ii).

73. An increase or decrease in actual emissions is creditable if: (1) the Director of Ohio EPA has not relied on it in issuing a permit for the stationary source under regulations approved pursuant to this rule and the permit was in effect when the increase in actual emissions from the particular change occurs; and (2) the increase or decrease in actual emissions of particulate matter, sulfur dioxide, or nitrogen oxides which occurred prior to the applicable minor source baseline date was required to be considered and calculated in determining the amount of maximum allowable increases remaining available.” The creditable decreases in emissions must be federally enforceable and enforceable by the Director at and after the time that the actual construction on the particular change begins. OAC Chapter 3745-31-01(DDD)(3)(b), (c), and (e).

74. Any person proposing a major modification of a stationary source shall apply the best available control technology for each regulated pollutant for which the proposed major modification will result in a significant net emissions increase from the unit. OAC Chapter 3745-31-15(D).

75. Violations of Ohio’s SIP requirements are subject to federal enforcement under Section 113 of the Act, 42 U.S.C. § 7413 and 40 C.F.R. § 52.23.

C. The Nonattainment New Source Review Requirements

76. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review “NSR” requirements for areas designated as nonattainment for purposes of meeting the NAAQS standards. These provisions are referred to herein as “Nonattainment NSR.” The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Clean Air Act Amendments (the “1990 Amendments”), P. Law 101-549, effective November 15, 1990, the Nonattainment NSR provisions were set forth in 42 U.S.C. §§ 7501-08.

77. Under Section 172(c)(5) of the Nonattainment NSR provisions of the CAA, 42 U.S.C. § 7502(c)(5), a state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of Section 173 of the CAA, 42 U.S.C. § 7503. Section 173 of the CAA, in turn, sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

78. Section 173 of the Act, 42 U.S.C. § 7503, provides that construction and operating permits may only be issued if: “(a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the ambient air quality standards is maintained; and (b) the pollution controls to be employed will reduce emissions to the ‘lowest achievable emission rate.’”

79. Section 182(f) of the Act, 42 U.S.C. § 7511a(f), sets forth requirements to take effect no later than November 15, 1992, relating to the construction and operation of new or modified major stationary sources of NO<sub>x</sub> located within nonattainment areas for ozone. Section 182(f) of the Act, 42 U.S.C. § 7511a(f), defines NO<sub>x</sub> as a pollutant that must be treated as a contributor to the criteria pollutant ozone. For the purposes of 42 U.S.C. § 7511a, a “major stationary source” of NO<sub>x</sub> is one that emits or has the potential to emit 100 tons per year or more of a regulated pollutant. A “significant” net emissions increase of NO<sub>x</sub> is one that would result in increased emissions of 40 tons per year or more. 42 U.S.C. § 7511a.

80. Upon EPA approval, SIP requirements are Federally enforceable under Section 113 of the Act, 42 U.S.C. §§ 7413(a), (b); 40 C.F.R. § 52.23.

1. The Ohio Nonattainment NSR Requirements

81. On April 15, 1974, U.S. EPA approved revisions to Ohio's SIP that required NSR preconstruction permits for new or modified sources ("the 1974 permit requirements"). 39 Fed. Reg. 13,539 (April 15, 1974). The approved provisions of the Ohio SIP were codified at OAC Chapter 3745-31-01 through 3745-31-08, as amended by 45 Fed. Reg. 72,119, 72,122 (Oct. 31, 1980). *See* 40 C.F.R. §§ 52.1870(c)(83) and 1879 (1999). On September 8, 1993, U.S. EPA again approved certain revisions to Ohio's Nonattainment NSR SIP Rules. 58 Fed. Reg. 47,211 (Sept. 8, 1993); *see* 40 C.F.R. §§ 52.1870(c)(83) and 1879 (1999). These Nonattainment NSR SIP rules were promulgated pursuant to the requirements of Part D of Title I of the CAA Amendments of 1977, 42 U.S.C. §§ 7501-08, and following the 1990 Amendments, 42 U.S.C. §§ 7501-15. The SIP Rules, as further amended in 2001 and 2003, are now codified at OAC Chapter 3745-31-01 through 3745-31-29. 40 C.F.R. §§ 52.1870(c)(83) and 1879 (1999).

82. Under Ohio's approved Nonattainment NSR SIP Rules, no person may undertake a major modification of an existing major stationary source in a nonattainment area without first obtaining a Nonattainment NSR permit to install, or under the 1974 permit requirements, a permit to construct or modify, from the Ohio Environmental Protection Agency ("EPA"). OAC Chapter 3745-31-21 and OAC Chapter 3745-31-02(A).

83. For purposes of Ohio's Nonattainment NSR program, the definitions of "major stationary source;" "major modification;" "net emissions increase" "significant" net emissions increase; "contemporaneous;" and "creditable" are the same as the definitions set forth in paragraphs 65 to 72, *supra*.

84. Section 173 of Part D of the Act, 42 U.S.C. § 7503, and the Ohio SIP require that in order to obtain a Nonattainment NSR permit, the owner or operator of a source undertaking a major modification must, among other things: (a) comply with the lowest achievable emission rate as defined in Section 171(3) of the Act, 42 U.S.C. § 7501(3)(a); (b) obtain federally enforceable emission offsets at least as great as the new or modified source's emissions; (c) certify that all other major sources that it owns or operates within Ohio are in compliance with the CAA; and (d) demonstrate that the benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its construction or modification. OAC Chapters 3745-31-01 through 3745-31-08 and OAC Chapter 3745-31-22.

D. State SIP General Permit ("Minor Source Permit") Requirements

1. Indiana SIP General Permit Requirements

85. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a SIP that provides for the maintenance, implementation and enforcement of NAAQS. Under Section 110(a)(2) of the Act, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution, including stationary sources in attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.

86. In accordance with Section 110(a)(2) of the Act, the Indiana SIP at all relevant times has included provisions prohibiting the commencement of construction or modification of any source or facility without either: (1) registering the construction or modification with the Commissioner of the Indiana Department of Environmental Management ("Commissioner") if the construction or modification would have potential emissions less than or equal to twenty-five tons per year of any

regulated pollutant and potential emissions more than five pounds per hour or twenty-five pounds per day of PM, more than ten pounds per hour or fifty pounds per day of SO<sub>2</sub>, or more than five pounds per hour or twenty-five pounds per day of NO<sub>x</sub> or, (2) applying for and obtaining a construction permit for such construction or modification, and (3) having an approved permit to operate the source or modification (i) if the construction or modification takes place before December 6, 1994, and will result in a potential increase in emissions of twenty-five tons per year or more of any regulated pollutant (APC Regulation 19, Section 2 (effective February 16, 1982)) or (ii) if the construction or modification takes place on or after December 7, 1994 and the source, facility, or modification has potential emissions of twenty-five tons or more per year of any regulated pollutant (325 IAC 2-1-1 (effective December 7, 1994)). These provisions (hereinafter the "Indiana SIP General Permit Requirements") also apply to the construction or modification of any source or facility which also triggers PSD obligations. *See* APC Regulation 19 and 325 IAC 2-1.

87. Up until 1997, the definitions applicable to the Indiana General Permit Requirements were codified at 325 Indiana Administrative Code ("IAC") 1-1; 46 Fed. Reg. 54,941 (November 5, 1981), and became effective on December 7, 1981. These definitions continued to apply until they were revised and renotified on February 18, 1997 at 326 IAC 1-1; 62 Fed. Reg. 7193 (February 18, 1997).

88. "Source" is defined, under the applicable Indiana SIP General Permit Requirements, as an aggregation of one or more facilities which are located on one piece of property or on contiguous or adjacent properties, and which are owned or operated by the same person (or by persons under common control). 325 IAC 1.1-1, Section 76 (effective December 7, 1981); 326 IAC 1-2-73 (effective from February 18, 1997 to April 8, 1997 and effective since July 21, 1997).

89. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “facility” was defined as, *inter alia*, any one structure, piece of equipment, installation or operation which emits or has the potential to emit any air contaminant. 325 IAC 1.1-1, Section 27 (effective December 7, 1981); 326 IAC 1-2-27 (effective from February 18, 1997 to April 8, 1997 and effective since July 21, 1997).

90. “Construction” is defined under the applicable Indiana SIP General Permit Requirements as the “fabrication, erection, or installation of an emission source, air pollution control equipment, or a facility.” 325 IAC 1.1-1, Section 21 (effective December 7, 1981); 326 IAC 1-2-21 (effective from February 18, 1997 to April 8, 1997 and effective since July 21, 1997).

91. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “modification” was defined as an addition to an existing facility or any physical change, or change in the method of operation of any facility which increases the potential or legally allowed emissions (whichever is more stringent) of any pollutant that could be emitted from the facility or which results in emissions of any pollutant not previously emitted. 325 IAC 1.1-1, Section 43 (effective December 7, 1981); 326 IAC 1-2-42 (effective from February 18, 1997 to April 8, 1997 and effective since July 21, 1997).

92. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “commence construction” was defined as when a facility owner or operator has either begun, or caused to begin, a continuous program of physical on-site construction of the facility or entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility. 325 IAC 1.1-1, Section 20 (effective from December 7, 1981 to July 15, 1993).

93. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “potential emissions” was defined as the emission of any one pollutant which would be emitted from a facility if that facility were operated without the use of pollution control equipment and based on maximum annual rated capacity unless a facility’s hours of operation are limited by enforceable permit conditions. 325 IAC 1.1-1, Section 58 (decided December 7, 1981); 326 IAC 1-2-55 (effective February 18, 1997 to April 8, 1997 and effective since July 21, 1997).

94. At relevant times, for purposes of the Indiana SIP General Permit Requirements, “regulated pollutant” was defined as any air pollutant for which an Air Pollution Control rule establishing emission limitations or requirements have been promulgated pursuant to Indiana law. 325 IAC 1.1-1, Section 69 (effective December 7, 1981); 326 IAC 1-2-66 (effective February 18, 1997 to April 8, 1997 and effective since July 21, 1997).

95. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon U.S. EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

## 2. The Ohio SIP General Permit Requirements

96. Under Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air pollution, including stationary sources that are “minor,” *i.e.*, not “major,” in both attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.

97. In accordance with Section 110(a)(2) of the Act, the Ohio SIP general permit requirements were originally approved on April 15, 1974, 39 Fed. Reg. 13,542, and have been codified at all relevant times to this Second Amended Complaint at OAC Chapter 3745-31 (hereinafter the “Ohio General Permit Requirements”). The Ohio SIP general permit requirements

has included provisions prohibiting the modification of any source or facility without obtaining a Permit to Install. OAC Chapter 3745-31-02(A).

98. The Ohio SIP requires any person who wishes to modify any source of air pollutants to first apply for and obtain a Permit to Install from EPA. OAC Chapter 3745-31-02(A). A “modification” is defined by the Ohio SIP general permit requirements as any physical change in, or change in the method of operation of a source of air pollutants that increases the amount of air pollutants emitted. OAC Chapter 3745-31-01(E).

99. In order to obtain a Permit to Install pursuant to the Ohio SIP General Permit Requirements, the person modifying a source of air pollutants must: (a) employ the Best Available Technology, as determined by the source and the Director of the Ohio Environmental Protection Agency, at the source to control the emissions of air pollutants (OAC Chapter 3745-31-05(A)(3)), and (b) must not prevent or interfere with the attainment or maintenance of a NAAQS (OAC Chapter 3745-31-05(A)(1)).

100. Upon U.S. EPA approval, SIP requirements are federally enforceable under Section 113 of the Act, 42 U.S.C. § 7413. 40 C.F.R. § 52.23. Pursuant to Sections 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), any person who violates any requirement or prohibition of an applicable implementation plan or permit may be subject to a civil action for a permanent or temporary injunction and a civil penalty.

### 3. West Virginia General SIP Permit Requirements

101. Under Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air

pollution, including stationary sources that are not “major,” in both attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.

102. The West Virginia SIP provides that a person making any modification to an existing major source that has not been issued a permit under W.Va. Code State R. tit. 45 § 30 must report the construction and/or modification to the Director of the West Virginia Department of Environmental Protection and obtain a permit to construct or modify. West Virginia Adm. Chapter 16-20, Series XIII, § 1.01 (effective June 1, 1974) and W.Va. Code State R. tit. 45 § 13 (effective April 27, 1994).

103. In accordance with Section 110(a)(2) of the Act, 72 U.S.C. § 7410, the West Virginia SIP at all relevant times has included provisions requiring any person who wishes to construct or modify a stationary source to file a complete permit application with the Director of the West Virginia Air Pollution Control Commission and obtain a permit. The person shall not construct or modify such stationary source until the Director issues a permit approving of such construction or modification. West Virginia Adm. Chapter 16-20, Series XIII, §§ 1.01 and 4.01; W.Va. Code State R. tit. 45 § 13-5.1 and 5.4.

104 Regulation XIII defined the term “construction” to mean the “fabrication, erection, or installation of a direct or indirect affected source. For the purposes of this regulation, an expansion of an existing source which increases the amount of any discharge or results in any new discharge shall be considered construction.” West Virginia Adm. Chapter 16-20, Series XIII, § 2.07. Since April 27, 1994, the term “construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in the potential to emit or an increase in actual emissions of regulated air pollutants.” W.Va. Code State R. tit. 45 § 13-2.5.

105. Regulation XIII defined the term “modification” to mean “any physical change in, or change in the method of operation of, an existing direct affected source which increases the amount of any discharge from such existing source or results in any new discharge from such existing source, for which the Commission has promulgated an emission or ambient air quality standard.” West Virginia Adm. Chapter 16-20, Series XIII, § 2.08(a). Since April 27, 1994, a “modification” is defined as “any physical change in or change in the method of operation of an existing stationary source which results in an emissions increase of two (2) pounds per hour or more or five (5) tons per year or more of any regulated air pollutant other than a hazardous or toxic air pollutant.” W.Va. Code State R. tit. 45 § 13-2.17.

106. Pursuant to West Virginia Adm. Chapter 16-20, Series XIII, § 2.11(a), a “direct affected source” is “any stationary source subject to an emission regulation promulgated by the Commission; or any stationary source which discharges, or may discharge, more than six (6) pounds per hour of any air pollutant for which the Commission has promulgated an ambient air quality standard.” Since April 27, 1994, “stationary source” means “any building, structure, facility, installation or emissions unit or combination thereof, which: (1) is subject to any emission control rule promulgated by the Director; or (2) discharges or has the potential to discharge more than six (6) pounds per hour of . . . any air pollutant for which the Director has promulgated an ambient air quality.” W.Va. Code State R. tit. 45 § 13-2.24(a) and (b).

107. Under the West Virginia SIP, the permit application shall include, but is not limited to, site information, plans, descriptions, the manner in which the proposed modification or construction will be operated, maximum emissions rates and emissions control equipment data. West Virginia Adm. Chapter 16-20, Series XIII, § 4.02; W.Va. Code State R. tit. 45 § 13-5.4.

108. Under the West Virginia SIP, to obtain a permit for construction or modification, the proposed construction or modification must not violate applicable emissions standards, an applicable air quality increment or be inconsistent with the purpose of this rule. West Virginia Adm. Chapter 16-20, Series XIII, § 4.04; W.Va. Code State R. tit. 45 § 13-5.7.

109. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon U.S. EPA approval, SIP requirements are federally enforceable under Section 113 of the Act, 42 U.S.C. § 7413. 40 C.F.R. § 52.23.

#### 4. Virginia General SIP Permit Requirements

110. Under Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air pollution, including stationary sources that are “minor,” *i.e.*, not “major,” in both attainment and nonattainment areas of the state, as necessary to assure that NAAQS are achieved.

111. In accordance with Section 110(a)(2) of the Act, the Virginia SIP at all relevant times has included provisions prohibiting the construction and/or modification of any stationary source or facility without obtaining a permit to construct and/or modify and operate such source. The Virginia State Air Pollution Control Board (“VSAPCB”) regulations Part VIII § 120-08-01 (formerly Part II § 2.33 prior to February 25, 1993).

112. At relevant times, the Virginia SIP required any person who wished to construct or modify a major stationary source to file a complete permit application with the State Air Pollution Control Board. VSAPCB, Part VIII § 120-08-01(C)(4)(b). The permit application should have identified each emissions point within the unit subject to these permit requirements. For projects that

are performed in phases, a single application for the entire project should be submitted. VSAPCB, Part VIII §§ 120-08-01(D)(2) and (3).

113. At relevant times, the Virginia SIP defined the term “stationary source” as “any building, structure, facility or installation which emits or may emit a pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under control of the same person.”

VSAPCB, Part VIII §§ 120-08-01(B)(3). A “major stationary source” was defined during the relevant time as “a stationary source which emits, or has the potential to emit, 100 tons or more per year of any air pollutant.” *Id.*

114. Under the Virginia SIP, the term “construction” means “fabrication, erection, or installation of an emissions unit.” VSAPCB, Part VIII §§ 120-08-01(B)(3)

115. Under the Virginia SIP, the term “modification” means “any physical change in, or change in the method of operation of, or addition to, an emissions unit which increases the amount of any air pollutant emitted into the atmosphere by the unit or which results in the emission of any air pollutant into the atmosphere not previously emitted.” VSAPCB, Part VIII §§ 120-08-01(B)(3).

116. Under the Virginia SIP, no permit will be issued unless the source is designed, built and equipped to comply with specified performance and emissions standards. VSAPCB, Part VIII §§ 120-08-01(F)(1).

117. Pursuant to Section 113(a) and (b) of the Act, 42 U.S.C. § 7413(a) and (b), upon U.S. EPA approval, violations of VSAPCB regulations, part of Virginia's SIP requirements, are federally enforceable under Section 113 of the Act, 42 U.S.C. § 7413. 40 C.F.R. § 52.23.

## ENFORCEMENT PROVISIONS

118. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may . . .

\* \* \*

(C) bring a civil action in accordance with subsection (b) of this section.

119. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may . . . bring a civil action in accordance with subsection (b) of this section . . . .”

120. Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), and 40 C.F.R. § 52.23 authorize the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan.

121. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil

penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1) of the Act, 42 U.S.C. § 7413(b)(1), including violations of Section 165(a) of the Act, 42 U.S.C. § 7475(a) and Section 111 of the Act, 42 U.S.C. § 7411.

122. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

#### GENERAL ALLEGATIONS

123. At all times pertinent to this civil action, Defendant AEP Service Corp. was an operator of each unit of each facility that is the subject of the claims for relief in this Second Amended Complaint.

124. At all times pertinent to this civil action, Defendant Indiana Michigan was an owner and, along with AEP Service Corp., an operator of each unit of the Tanners Creek Plant.

125. At times pertinent to this civil action, Defendant Ohio Power was an owner and, along with AEP Service Corp., an operator of each unit of the Muskingum River, Kammer, and Mitchell Plants, and was an owner and, along with AEP Service Corp., an operator of each unit of the Cardinal, John E. Amos and Sporn Plants.

126. At times pertinent to this civil action, Defendant Cardinal was an owner of Unit 1 and, along with AEP Service Corp., an operator of Units 1 and 2 at the Cardinal Plant.

127. At times pertinent to this civil action, Defendant Appalachian Power was an owner and, along with AEP Service Corp., an operator of the units at the Clinch River Plant and an owner and, along with AEP Service Corp., an operator of the units at the Philip Sporn, and John E. Amos Plants.

128. At times pertinent to this civil action, Defendant CSPC was an owner and, along with AEP Service Corp., an operator of the Conesville Plant.

129. At all times pertinent to this civil action, the Tanners Creek, Cardinal, Conesville, Muskingum River, John E. Amos, Kammer, Mitchell, Philip Sporn and the Clinch River Plants were “major emitting facilities” and “major stationary sources,” within the meaning of the Act for NO<sub>x</sub>, SO<sub>2</sub>, and PM.

#### FIRST CLAIM FOR RELIEF

(PSD Violations: Modifications at the Tanners Creek Plant)

130. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

131. At various times, Defendants AEP Service Corp. and Indiana Michigan commenced construction of major modifications, as defined in the Act, at the Tanners Creek Plant. These major modifications included, but are not limited to: (1) the replacement during approximately February through April 1988 of the outlet bank and outlet tube assemblies for the reheater, outlet headers, and vestibule casing for Unit 3 (Capital Improvement Requisition (“CI”) 31236); (2) the replacement of eleven cyclone furnaces during approximately August through December 1987 for Unit 4 (CI# 31140); (3) the replacement during approximately October through December 1989 of the furnace arch and floor tubes for Unit 4 (CI# 31378); (4) the replacement during approximately

September through December 1998 of the secondary superheater intermediate and outlet banks and headers for Unit 4 (CI# 31737); and (5) the replacement of the third pass tubing at Unit 4 during approximately September through December 1998 (CI# 31739). Defendants AEP Service Corp. and Indiana Michigan constructed additional major modifications to the Tanners Creek Plant beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub> and SO<sub>2</sub>.

132. Defendants AEP Service Corp. and Indiana Michigan violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in 40 C.F.R. § 52.21 and incorporated into the U.S. EPA approved Indiana SIP at 40 C.F.R. § 52.793, by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendants AEP Service Corp. and Indiana Michigan have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub> and SO<sub>2</sub>, as applicable, as required by 40 C.F.R. § 52.21(j). Defendants AEP Service Corp. and Indiana Michigan failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k); (2) perform an analysis of ambient air quality in the area as required by 40 C.F.R. § 52.21(m); and (3) submit to Indiana or U.S. EPA all information necessary to perform any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n).

133. Based upon the foregoing, Defendants AEP Service Corp. and Indiana Michigan have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R.

§ 52.21. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

134. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and Indiana Michigan to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### SECOND CLAIM FOR RELIEF

(Indiana SIP General Permit Requirements: Violations at the Tanners Creek Plant)

135. Paragraphs 1 through 134 are realleged and incorporated herein by reference.

136. At various times, Defendants AEP Service Corp. and Indiana Michigan commenced construction or modifications of a source, as defined in the Indiana SIP General Permit Requirements, resulting in potential emissions of twenty-five (25) tons or more per year of regulated pollutants or fifty (50) pounds per day of SO<sub>2</sub>, or, twenty-five (25) pounds per day of NO<sub>x</sub> or PM at the Tanners Creek Plant. These modifications include, but are not limited to, the modifications described in paragraph 131, above.

137. Defendants AEP Service Corp. and Indiana Michigan violated and continue to violate provisions of the Indiana SIP General Permit Requirements with regard to the identified modifications in paragraph 131 above, by undertaking such modifications and operating the facility after the modifications without applying for and obtaining permits to construct and operate the modifications

as required, as applicable. Unless restrained by an order of this Court, these and similar violations of the Indiana SIP will continue.

138. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, violations, as set forth above, subject Defendants AEP Service Corp. and Indiana Michigan to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

### THIRD CLAIM FOR RELIEF

(PSD Violations: Modifications at the Cardinal Plant)

139. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

140. At various times, Defendants AEP Service Corp., Ohio Power, and/or Cardinal commenced construction of major modifications, as defined in the Act, at the Cardinal Plant. These major modifications included, but are not limited to: (1) the replacement of all five pulverizers and the addition of ten burners constructed on the front and rear walls of the primary furnace (CI# 71448), and the removal of the horizontal primary superheater and the addition of wingwalls and the replacement of a redesigned horizontal reheater (CI# 71516) at Unit 1 from approximately October 1978 through May 1980; (2) the replacement of the lower furnace tubes for Unit 1 during approximately March 1990 through December 1991 (CI# 72373); (3) the upgrade of the primary air fan motors for Unit 1 during approximately September through October 1988 (CI# 72201); (4) the replacement of four pulverizers and the addition of ten burners constructed on the front and rear walls of the primary furnace (CI# 71449), and the removal of the horizontal primary superheater and the

addition of wingwalls and the replacement of a redesigned horizontal reheater (CI# 71517) for Unit 2 during approximately August 1978 through September 1980; (5) the replacement of the lower furnace tubes for Unit 2 during approximately February 1991 through December 1992 (CI# 98085); and (6) the upgrade of four primary air fan motors for Unit 2 during approximately January through August 1988 (CI# 98066). Defendants AEP Service Corp., Ohio Power, and/or Cardinal constructed additional major modifications to the Cardinal Plant beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following pollutants: NO<sub>x</sub>, SO<sub>2</sub> and/or PM.

141. Defendants AEP Service Corp., Ohio Power, and/or Cardinal violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in 40 C.F.R. § 52.21 and incorporated into the U.S. EPA approved Ohio SIP at 40 C.F.R. §52.1884, or to the extent applicable, as required by 40 C.F.R. §52.21(i)(1) and (s)(1) (promulgated at 43 Fed. Reg. 26,380 (June 19, 1978)), or for major modifications commenced prior to June 19, 1978, as required by 40 C.F.R. § 52.21(d)(1) and (e)(2) (promulgated at 39 Fed. Reg. 42,510 (December 5, 1974)) by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendants AEP Service Corp., Ohio Power, and/or Cardinal have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub>, SO<sub>2</sub> and/or PM, as applicable, as required by 40 C.F.R. § 52.21(j). Defendants AEP Service Corp., Ohio Power, and/or Cardinal failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k) or, to the extent applicable, as required by 40 C.F.R. §52.21(l) (promulgated at

43 Fed. Reg. 26,380 (June 19, 1978)), or for modifications commenced prior to June 19, 1978, as required by 40 C.F.R. § 52.21(d) (promulgated at 39 Fed. Reg. 42,510 (December 5, 1974)); (2) perform an analysis of ambient air quality in the area as required by 40 C.F.R. § 52.21(m); and (3) submit to Ohio or U.S. EPA all information necessary to perform any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n) or, to the extent applicable, as required by 40 C.F.R. § 52.21(o) (promulgated at 43 Fed. Reg. 26,380 (June 19, 1978)), or for modifications commenced prior to June 19, 1978, as required by 40 C.F.R. § 52.21(d) (promulgated at 39 Fed. Reg. 42,510 (December 5, 1974)).

142. Based upon the foregoing, Defendants AEP Service Corp., Ohio Power, and/or Cardinal have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

143. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp., Ohio Power, and/or Cardinal to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

**FOURTH CLAIM FOR RELIEF**  
(Nonattainment NSR: Violations at the Cardinal Plant)

144. Paragraphs 1 through 129 and 140 through 143 are realleged and incorporated herein by reference.

145. At various times, Defendants AEP Service Corp., Ohio Power, and/or Cardinal commenced construction of major modifications, as defined in the Act and the Ohio SIP, at Cardinal Plant. These major modifications include, but are not limited to, the modifications described in paragraph 140, above. Some of these major modifications occurred during time periods when the Cardinal Plant was located in a nonattainment area for SO<sub>2</sub>, PM and/or ozone. These major modifications resulted in significant net emission increases of SO<sub>2</sub> and/or NO<sub>x</sub>, as defined by the CAA and the Ohio SIP, 42 U.S.C. §§ 7501-7515, and 40 C.F.R. Part 51, App. S, as incorporated into the Ohio SIP at OAC Chapter 3745-31.

146. Defendants AEP Service Corp., Ohio Power, and/or Cardinal violated and continue to violate the Nonattainment NSR provisions of the CAA, as incorporated into the Ohio SIP by, among other things, undertaking such major modifications and operating the facility after the modifications without obtaining a Nonattainment NSR permit as required by OAC Chapter 3745-31-02(A) or, to the extent applicable, AP 9-02. In addition, as required by the CAA, 42 U.S.C. §§ 7501-7515, and OAC Chapter 3745-31, Defendants AEP Service Corp., Ohio Power, and/or Cardinal have not: (1) installed and operated LAER for control of SO<sub>2</sub> and NO<sub>x</sub>; (2) obtained and operated with federally enforceable emission offsets at least as great as the modified source's emissions; (3) certified that all other major sources that they own or operate within Ohio are in compliance with the CAA; and (4) demonstrated that the benefits of the modifications significantly outweigh the environmental and social costs imposed as a result of the modifications.

147. Based upon the foregoing, the Defendants AEP Service Corp., Ohio Power, and/or Cardinal have violated and continue to violate the Nonattainment NSR provisions of Part D of Title

I of the CAA, 42 U.S.C. §§ 7501-7515, and OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

148. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants AEP Service Corp., Ohio Power, and/or Cardinal to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### FIFTH CLAIM FOR RELIEF

(Ohio SIP General Permit Requirements: Violations at the Cardinal Plant)

149. Paragraphs 1 through 129 and 140 through 148 are realleged and incorporated herein by reference.

150. At various times, Defendants AEP Service Corp., Ohio Power, and/or Cardinal commenced construction of modifications, as defined in the Act and the Ohio SIP, at the Cardinal Plant. These modifications include, but are not limited to, the modifications described in paragraph 140, above.

151. Defendants AEP Service Corp., Ohio Power, and/or Cardinal violated and continue to violate the Ohio SIP General Permit provisions by, among other things, undertaking such modifications as identified in paragraph 140 above, and operating the facility after the modifications without obtaining a Permit To Install as required by OAC Chapter 3745-31-02(A) or, to the extent applicable, a permit to construct or modify pursuant to AP 9-02. In addition, Defendants AEP Service Corp., Ohio Power, and/or Cardinal have not installed and operated “Best Available Technology” following the modifications as required by OAC Chapter 3745-31-05(A)(3) or, to the extent

applicable, AP 9-02, and have not demonstrated that the modifications will not interfere with the attainment or maintenance of a NAAQS as required by OAC Chapter 3745-31-05(A)(1) or, to the extent applicable, AP 9-02.

152. Based upon the foregoing, the Defendants AEP Service Corp., Ohio Power, and/or Cardinal have violated and continue to violate the Ohio SIP General Permit provisions of OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Ohio SIP will continue.

153. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp., Ohio Power, and/or Cardinal to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF  
(PSD Violations: Modifications at the Conesville Plant)

154. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

155. At various times, Defendants AEP Service Corp. and CSPC commenced construction of major modifications, as defined in the Act, at the Conesville Plant. These major modifications included, but are not limited to: (1) the replacement of 4 cyclones, primary burners, and re-entrant throats at Unit 1 during approximately May to July 1987 (CI# 75140); (2) the replacement of 4 cyclones, primary burners, and re-entrant throats at Unit 2 during approximately June to September 1987 (CI# 75246); (3) the replacement of furnace floor tubing for Unit 2 during approximately August

to October 1989 (CI# 75312); and (4) and the replacement of the economizer bank at Unit 3 during approximately September to November 1988 (CI# 75285). These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub> and SO<sub>2</sub>.

156. Defendants AEP Service Corp. and CSPC violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in 40 C.F.R. § 52.21 and incorporated into the U.S. EPA approved Ohio SIP at 40 C.F.R. § 52.1884, by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendants AEP Service Corp. and CSPC have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub> and SO<sub>2</sub>, as applicable, as required by 40 C.F.R. § 52.21(j). Defendants AEP Service Corp. and CSPC failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k); (2) perform an analysis of ambient air quality in the area as required by 40 C.F.R. 52.21(m); and (3) submit to Ohio or U.S. EPA all information necessary to perform any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n).

157. Based upon the foregoing, Defendants AEP Service Corp. and CSPC have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

158. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp.

and CSPC to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### SEVENTH CLAIM FOR RELIEF

(Nonattainment NSR: Violations at the Conesville Plant)

159. Paragraphs 1 through 129 and 155 through 158 are realleged and incorporated herein by reference.

160. At various times, Defendants AEP Service Corp. and CSPC commenced construction of major modifications, as defined in the Act and the Ohio SIP, at Conesville Plant. These major modifications include, but are not limited to, the modifications described in paragraph 155, above. All of these major modifications occurred during time periods when the Conesville Plant was located in a nonattainment area for SO<sub>2</sub>. These major modifications resulted in significant net emission increases of SO<sub>2</sub>, as defined by the CAA and the Ohio SIP, 42 U.S.C. §§ 7501-7515, and 40 C.F.R. Part 51, App. S, as incorporated into the Ohio SIP at OAC Chapter 3745-31.

161. Defendants AEP Service Corp. and CSPC violated and continue to violate the Nonattainment NSR provisions of the CAA and the Ohio SIP by, among other things, undertaking such major modifications and operating the facility after the modifications without obtaining a Nonattainment NSR permit as required by OAC Chapter 3745-31-02(A). In addition, as required by the CAA, 42 U.S.C. § 7501-7515, and OAC Chapter 3745-31, Defendants AEP Service Corp. and CSPC have not: (1) installed and operated LAER for control of SO<sub>2</sub>; (2) obtained and operated with federally enforceable emission offsets at least as great as the modified source's emissions;

(3) certified that all other major sources that they own or operate within Ohio are in compliance with the CAA; and (4) demonstrated that the benefits of the modifications significantly outweigh the environmental and social costs imposed as a result of the modifications.

162. Based upon the foregoing, the Defendants AEP Service Corp. and CSPC have violated and continue to violate the Nonattainment NSR provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, and OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

163. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants AEP Service Corp. and CSPC to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### EIGHTH CLAIM FOR RELIEF

(Ohio SIP General Permit Requirements: Violations at the Conesville Plant)

164. Paragraphs 1 through 129 and 155 through 163 are realleged and incorporated herein by reference.

165. At various times, Defendants AEP Service Corp. and CSPC commenced construction of modifications, as defined in the Act and the Ohio SIP, at Conesville Plant. These modifications include, but are not limited to, the modifications described in paragraph 155, above.

166. Defendants AEP Service Corp. and CSPC violated and continue to violate the Ohio SIP General Permit provisions by, among other things, undertaking such modifications identified in paragraph 155, above and operating the facility after the modifications without obtaining a Permit To

Install as required by OAC Chapter 3745-31-02(A). In addition, Defendants AEP Service Corp. and CSPC have not installed and operated “Best Available Technology” following the modifications as required by OAC Chapter 3745-31-05(A)(3), and have not demonstrated that the modifications will not interfere with the attainment or maintenance of a NAAQS as required by OAC Chapter 3745-31-05(A)(1).

167. Based upon the foregoing, the Defendants AEP Service Corp. and CSPC have violated and continue to violate the Ohio SIP General Permit provisions of OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Ohio SIP will continue.

168. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and CSPC to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### NINTH CLAIM FOR RELIEF

(PSD Violations: Modifications at the Muskingum River Plant)

169. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

170. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction of major modifications, as defined in the Act, at the Muskingum River Plant. These major modifications included, but are not limited to: (1) the replacement, during approximately April to May 1988, of the inlet and outlet tube assemblies for the secondary superheaters for Unit 1 (CI# 72172); (2) the replacement, during approximately February to April 1988, of the inlet and outlet

tube assemblies for the secondary superheaters for Unit 2 (CI# 72173); (3) the replacement of 5 substantially redesigned cyclone furnaces and associated burners, and the replacement of furnace floor tubes for Unit 3 during approximately June to September 1988 (CI# 72162, 72254, and 72258); (4) the replacement of 5 substantially redesigned cyclone furnaces and associated burners, and the replacement of the furnace floor tubes for Unit 4 during approximately September 1987 to July 1989 (CI# 72163, 72255, and 72259); (5) the replacement, during approximately March to June 2001, of the reheat intermediate headers and intermediate and outlet banks, and the reheat outlet headers and leg tubes for Unit 4 (CI# 72875 and 72850); (6) the replacement of the secondary superheater outlet headers and legs for Unit 4 during approximately April to July 1989 (CI# 72398); (7) the replacement of five pulverizers and the addition of ten burners constructed on the front and rear walls of the primary furnace (CI# 71450), and the removal of the horizontal primary superheater and the addition of wingwalls and the replacement of a redesigned horizontal reheater (CI# 71505), and the replacement of the furnace hopper front slope (CI# 71665) for Unit 5 during approximately October 1978 through August 1980; (8) the redesign and replacement during approximately March to July 1985 of an upgraded economizer for Unit 5 (CI# 71966); (9) the upgrade of the primary air fan motors for Unit 5 during approximately April to September 1988 (CI# 72202); (10) the replacement of the lower furnace tubes for Unit 5 during approximately August 1990 to June 1992 (CI# 72372); and (11) the replacement of the first reheat superheater outlet bank at Unit 5 during March to June 1992 (CI# 72632). Defendants AEP Service Corp. and Ohio Power constructed additional major modifications to the Muskingum River Plant beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub>, SO<sub>2</sub> and/or PM.

171. Defendants AEP Service Corp. and Ohio Power violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in 40 C.F.R. § 52.21 and incorporated into the U.S. EPA approved Ohio SIP at 40 C.F.R. § 52.1884, or to the extent applicable, as required by 40 C.F.R. § 52.21(i)(1) and (s)(1) (promulgated at 43 Fed. Reg. 26,380 (June 19, 1978)), or for major modifications commenced prior to June 19, 1978, as required by 40 C.F.R. § 52.21(d)(1) and (e)(2) (promulgated at 39 Fed. Reg. 42,510 (December 5, 1974)) by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendants AEP Service Corp. and Ohio Power have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub>, SO<sub>2</sub> and/or PM, as applicable, as required by 40 C.F.R. § 52.21(j). Defendants AEP Service Corp. and Ohio Power failed, and continue to fail, to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k) or, to the extent applicable, as required by 40 C.F.R. § 52.21(l) (promulgated at 43 Fed. Reg. 26,380 (June 19, 1978)), or for modifications commenced prior to June 19, 1978, as required by 40 C.F.R. § 52.21(d) (promulgated at 39 Fed. Reg. 42,510 (December 5, 1974)); (2) perform an analysis of ambient air quality in the area as required by 40 C.F.R. § 52.21(m); and (3) submit to Ohio or U.S. EPA all information necessary to perform any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n) or, to the extent applicable, as required by 40 C.F.R. § 52.21(o) (promulgated at 43 Fed. Reg. 26,380 (June 19, 1978)), or for modifications commenced prior to June 19, 1978, as required by 40 C.F.R. § 52.21(d) (promulgated at 39 Fed. Reg. 42,510 (December 5, 1974)).

172. Based upon the foregoing, Defendants AEP Service Corp. and Ohio Power have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

173. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### TENTH CLAIM FOR RELIEF

(Nonattainment NSR: Violations at the Muskingum River Plant)

174. Paragraphs 1 through 129 and 170 through 173 are realleged and incorporated herein by reference.

175. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction of major modifications, as defined in the Act and the Ohio SIP, at Muskingum River Plant. These major modifications include, but are not limited to: (1) the replacement, during approximately April to May 1988, of the inlet and outlet tube assemblies for the secondary superheaters for Unit 1 (CI# 72172); (2) the replacement, during approximately February to April 1988, of the inlet and outlet tube assemblies for the secondary superheaters for Unit 2 (CI# 72173); (3) the replacement of 5 substantially redesigned cyclone furnaces and associated burners, and the replacement of furnace floor tubes for Unit 3 during approximately June to September 1988

(CI# 72162, 72254, and 72258 ); (4) the replacement of 5 substantially redesigned cyclone furnaces and associated burners, and the replacement of the furnace floor tubes for Unit 4 during approximately September 1987 to July 1989 (CI# 72163, 72255, and 72259); (5) the replacement of the secondary superheater outlet headers and legs for Unit 4 during approximately April to July 1989 (CI# 72398); (6) the replacement of five pulverizers and the addition of ten burners constructed on the front and rear walls of the primary furnace (CI# 71450), and the removal of the horizontal primary superheater and the addition of wingwalls and the replacement of a redesigned horizontal reheater (CI# 71505), and the replacement of the furnace hopper front slope (CI# 71665) for Unit 5 during approximately October 1978 through August 1980; (7) the redesign and replacement during approximately March to July 1985 of an upgraded economizer for Unit 5 (CI# 71966); (8) the upgrade of the primary air fans for Unit 5 during approximately April to September 1988 (CI# 72202); (9) the replacement of the lower furnace tubes for Unit 5 during approximately August 1990 to June 1992 (CI# 72372); and (10) the replacement of the first reheat superheater outlet bank at Unit 5 during March to June 1992 (CI# 72632). These major modifications occurred during time periods when the Muskingum River Plant was located in a nonattainment area for SO<sub>2</sub>. These major modifications resulted in significant net emission increases of SO<sub>2</sub>, as defined by the Act and the Ohio SIP, 42 U.S.C. §§ 7501-7515, and 40 C.F.R. Part 51, App S., as incorporated into the Ohio SIP at OAC Chapter 3745-31.

176. Defendants AEP Service Corp. and Ohio Power violated and continue to violate the Nonattainment NSR provisions of the Act and the Ohio SIP by, among other things, undertaking such major modifications identified in paragraph 175, above and operating its facility after the modifications without obtaining a Nonattainment NSR permit as required by OAC Chapter 3745-31-

02(A) or, to the extent applicable, AP 9-02. In addition, as required by the Act, 42 U.S.C. §§ 7501-7515, and OAC Chapter 3745-31, Defendants AEP Service Corp. and Ohio Power have not: (1) installed and operated LAER for control of SO<sub>2</sub>; (2) obtained and operated with federally enforceable emission offsets at least as great as the modified source's emissions; (3) certified that all other major sources that they own or operate within Ohio are in compliance with the CAA; and (4) demonstrated that the benefits of the modifications significantly outweigh the environmental and social costs imposed as a result of the modifications.

177. Based upon the foregoing, the Defendants AEP Service Corp. and Ohio Power have violated and continue to violate the Nonattainment NSR provisions of Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, and OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

178. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violations set forth above subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

ELEVENTH CLAIM FOR RELIEF

(Ohio SIP General Permit Requirements: Violations at the Muskingum River Plant)

179. Paragraphs 1 through 129 and 170 through 178 are realleged and incorporated herein by reference.

180. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction of modifications, as defined in the Act and the Ohio SIP, at Muskingum River Plant. These modifications include, but are not limited to, the modifications described in paragraph 170, above.

181. Defendants AEP Service Corp. and Ohio Power violated and continue to violate the Ohio SIP General Permit provisions by, among other things, undertaking such modifications identified in paragraph 170, above and operating the facility after the modifications without obtaining a Permit To Install as required by OAC Chapter 3745-31-02(A) or, to the extent applicable, a permit to construct or modify pursuant to AP 9-02. In addition, Defendants AEP Service Corp. and Ohio Power have not installed and operated “Best Available Technology” following the modifications as required by OAC Chapter 3745-31-05(A)(3) or, to the extent applicable, AP 9-02, and have not demonstrated that the modifications will not interfere with the attainment or maintenance of a NAAQS as required by OAC Chapter 3745-31-05(A)(1) or, to the extent applicable, AP 9-02.

182. Based upon the foregoing, the Defendants AEP Service Corp. and Ohio Power have violated and continue to violate the Ohio SIP General Permit provisions of OAC Chapter 3745-31. Unless restrained by an order of this Court, these and similar violations of the Ohio SIP will continue.

183. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation

occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWELFTH CLAIM FOR RELIEF

(PSD Violations: Modifications at the John E. Amos Plant)

184. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

185. At various times, Defendants AEP Service Corp., Ohio Power and Appalachian Power commenced construction of major modifications, as defined in the Clean Air Act, at the John E. Amos Plant. These major modifications included, but are not limited to: (1) replacing the economizer and increasing the surface support system and retubing the main condenser for Unit 1 during approximately May to July 1989 (CI# 12130 and 12012); and (2) retubing the main condenser for Unit 3 during approximately February to June 1995 (CI# 12473/72778). Defendants AEP Service Corp., Ohio Power and Appalachian Power constructed additional major modifications to the John E. Amos Plant beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub> and SO<sub>2</sub>.

186. Defendants AEP Service Corp., Ohio Power, and Appalachian Power violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in the U.S. EPA approved West Virginia SIP at 40 C.F.R. § 52.2520, by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by W.Va. Code State R. tit. 45 §§ 14-1 and 14-6. In addition, Defendants AEP Service Corp., Ohio Power, and Appalachian Power have not installed, and continue to fail to operate,

BACT for control of NO<sub>x</sub> and SO<sub>2</sub>, as applicable, as required by W.Va. Code State R. tit. 45 § 14-7. Defendants AEP Service Corp., Ohio Power and Appalachian Power failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-8.1; (2) perform an analysis of ambient air quality in the area as required by W.Va. Code State R. tit. 45 §§ 14-8 and 14-10; (3) perform an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the major modification as required by W.Va. Code State R. tit. 45 § 14-11; and (4) submit to West Virginia all information necessary to perform any analysis or make those determinations as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-6.5.

187. Based upon the foregoing, Defendants AEP Service Corp., Ohio Power and Appalachian Power have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and W.Va. Code State R. tit. 45 § 14. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

188. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp., Ohio Power and Appalachian Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

### THIRTEENTH CLAIM FOR RELIEF

(West Virginia SIP Permit Requirements: Violations at the John E. Amos Plant)

189. Paragraphs 1 through 129 and 185 through 188 are realleged and incorporated herein by reference.

190. At various times, Defendants AEP Service Corp., Ohio Power, and Appalachian Power commenced construction or modifications of a source, as defined in the West Virginia SIP, resulting in emissions increases of regulated pollutants at the John E. Amos Plant. These modifications include, but are not limited to, the modifications described in paragraph 185, above.

191. Defendants AEP Service Corp., Ohio Power, and Appalachian Power violated and continue to violate provisions of the West Virginia SIP Permit Requirements with regard to the identified modifications in paragraph 185, above by undertaking such modifications and operating the facility after the modifications without applying for and obtaining permits to construct and operate the modifications. *See* W.Va. Code State R. tit. 45 § 13.

192. Based upon the foregoing, the Defendants AEP Service Corp., Ohio Power, and Appalachian Power have violated and continue to violate the West Virginia SIP provisions of W.Va. Code State R. tit. 45 § 13. Unless restrained by an order of this Court, these and similar violations of the West Virginia SIP will continue.

193. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, violations, as set forth above, subject Defendants AEP Service Corp., Ohio Power, and Appalachian Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation

occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTEENTH CLAIM FOR RELIEF  
(PSD Violations: Modifications at the Kammer Plant)

194. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

195. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction of major modifications, as defined in the Clean Air Act, at the Kammer Plant. These major modifications included, but are not limited to: (1) replacing the furnace floor tubing for Unit 1 during approximately April 1991 to July 1993 (CI# 72442); and (2) replacing the secondary superheater outlet bank and headers, replacing the reheat intermediate and outlet banks and headers, and replacing the outer penthouse casing and insulation for Unit 2 during approximately October to December 1998 (CI# 72863, 72864, and 72908). Defendants AEP Service Corp. and Ohio Power constructed additional major modifications to the Kammer Plant beyond those described in this paragraph. These modifications resulted and/or are expected to result in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub> and SO<sub>2</sub>.

196. Defendants AEP Service Corp. and Ohio Power violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in the U.S. EPA approved West Virginia SIP at 40 C.F.R. § 52.2520, by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by W.Va. Code State R. tit. 45 §§ 14-1 and 14-6. In addition, Defendants AEP Service Corp. and Ohio Power have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub> and SO<sub>2</sub>, as applicable, as required by W.Va. Code State R. tit. 45 § 14-7. Defendants AEP Service Corp. and Ohio Power failed and continue to fail to: (1) demonstrate that the construction or modification would

not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-8.1; (2) perform an analysis of ambient air quality in the area as required by W.Va. Code State R. tit. 45 §§ 14-8 and 14-10; (3) perform an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the major modification as required by W.Va. Code State R. tit. 45 § 14-11; and (4) submit to West Virginia all information necessary to perform any analysis or make those determinations as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-6.5.

197. Based upon the foregoing, Defendants AEP Service Corp. and Ohio Power have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and W.Va. Code State R. tit. 45 § 14. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

198. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTEENTH-FIRST CLAIM FOR RELIEF

(West Virginia SIP General Permit Requirements: Violations at the Kammer Plant)

199. Paragraphs 1 through 129 and 195 through 198 are realleged and incorporated herein by reference.

200. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction or modifications of a source, as defined in the West Virginia SIP, resulting in emissions increases of regulated pollutants at the Kammer Plant. These modifications include, but are not limited to, the modifications described in paragraph 195, above.

201. Defendants AEP Service Corp. and Ohio Power violated and continue to violate provisions of the West Virginia SIP Permit Requirements with regard to the identified modifications in paragraph 195 above, by undertaking such modifications and operating its facility after the modifications without applying for and obtaining permits to construct and operate the modifications. *See W.Va. Code State R. tit. 45 § 13.*

202. Based upon the foregoing, the AEP Service Corp. and Ohio Power have violated and continue to violate the West Virginia SIP provisions of W.Va. Code State R. tit. 45 § 13. Unless restrained by an order of this Court, these and similar violations of the West Virginia SIP will continue.

203. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, violations, as set forth above, subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15,

2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTEENTH CLAIM FOR RELIEF

(PSD Violations: Modifications at the Mitchell Plant)

204. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

205. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction of major modifications, as defined in the Clean Air Act, at the Mitchell Plant. These major modifications included, but are not limited to: (1) the replacement of the low pressure reheat outlet bank and header, heat recovery area rear wall, and penetration seals for Units 1 and 2 during approximately July to December 1993 (Unit 1: CI# 72721) and during approximately January to April 1994 (Unit 2: CI# 72722); (2) the conversion and redesign of the #15 MBF pulverizer to an MPS-89 pulverizer for Unit 1 during approximately November to December 1990 (CI#72462); and (3) the installation of a redesigned economizer for Unit 2 during approximately October 1987 to January 1988 (CI# 72206). Defendants AEP Service Corp. and Ohio Power constructed additional major modifications to the Mitchell Plant beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub> and SO<sub>2</sub>.

206. Defendants AEP Service Corp. and Ohio Power violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in the U.S. EPA approved West Virginia SIP at 40 C.F.R. § 52.2520, by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by W.Va. Code State R. tit. 45 §§ 14-1 and 14-6. In addition, Defendants AEP Service Corp. and Ohio Power have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub> and SO<sub>2</sub>, as

applicable, as required by W.Va. Code State R. tit. 45 § 14-7. Defendants AEP Service Corp. and Ohio Power failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-8.1; (2) perform an analysis of ambient air quality in the area as required by W.Va. Code State R. tit. 45 §§ 14-8 and 14-10; (3) perform an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the major modification as required by W.Va. Code State R. tit. 45 § 14-11; and (4) submit to West Virginia all information necessary to perform any analysis or make those determinations as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-6.5.

207. Based upon the foregoing, Defendants AEP Service Corp. and Ohio Power have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and W.Va. Code State R. tit. 45 § 14. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

208. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SEVENTEENTH CLAIM FOR RELIEF

(West Virginia SIP General Permit Requirements: Violations at the Mitchell Plant)

209. Paragraphs 1 through 129 and 205 through 208 are realleged and incorporated herein by reference.

210. At various times, Defendants AEP Service Corp. and Ohio Power commenced construction or modifications of a source, as defined in the West Virginia SIP, resulting in emissions increases of regulated pollutants at the Mitchell Plant. These modifications include, but are not limited to, the modifications described in paragraph 205, above.

211. Defendants AEP Service Corp. and Ohio Power violated and continue to violate provisions of the West Virginia SIP Permit Requirements with regard to the identified modifications in paragraph 205 above, by undertaking such modifications and operating the facility after the modifications without applying for and obtaining permits to construct and operate the modifications. *See* W.Va. Code State R. tit. 45 § 13.

212. Based upon the foregoing, the Defendants AEP Service Corp. and Ohio Power have violated and continue to violate the West Virginia SIP provisions of W.Va. Code State R. tit. 45 § 13. Unless restrained by an order of this Court, these and similar violations of the West Virginia SIP will continue.

213. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, violations, as set forth above, subject Defendants AEP Service Corp. and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15,

2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

EIGHTEENTH CLAIM FOR RELIEF  
(PSD Violations: Modifications at the Philip Sporn Plant)

214. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

215. At various times, Defendants AEP Service Corp., Appalachian Power, and Ohio Power commenced construction of major modifications, as defined in the Clean Air Act, at the Philip Sporn Plant. These major modifications included, but are not limited to: (1) the replacement of the lower furnace headers in the rear and side wall and the replacement of the seal trough, seal skirt, and drip screen for Units 1, 2, 3, and 4: during approximately June to September 1990 (Unit 1: CI# 12147 and 12166); during approximately December 1990 to April 1991 (Unit 2: CI# 72421 and 72446); during approximately December 1991 to March 1992 (Unit 3: CI# 12148); and during approximately December 1989 to March 1990 (Unit 4: CI# 72429); (2) the replacement of all tubes for the main condenser for Unit 2 during approximately December 1990 to April 1991 (CI# 72464); (3) the replacement of all lower primary furnace and front wall screen tube penetrations for Unit 5 during approximately May to December 1992 (CI# 72393); (4) the replacement of the upper three banks of the first reheater and first reheater inlet header for Unit 5 during approximately March to June 1990 (CI# 72477); (5) the retubing of the low pressure, high pressure and auxiliary condensers for Unit 5 during approximately May to December 1992 (CI# 72637); and (6) the replacement of the main stop and bypass valves for Unit 5 during approximately May to December 1992 (CI# 72311).

216. Defendants AEP Service Corp., Appalachian Power, and/or Ohio Power violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in the U.S. EPA approved West Virginia SIP at 40 C.F.R. § 52.2520, by, among other things,

undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by W.Va. Code State R. tit. 45 §§ 14-1 and 14-6. In addition, Defendants AEP Service Corp., Appalachian Power, and/or Ohio Power have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub>, SO<sub>2</sub> and PM, as applicable, as required by W.Va. Code State R. tit. 45 § 14-7. Defendants AEP Service Corp., Appalachian Power, and/or Ohio Power failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-8.1; (2) perform an analysis of ambient air quality in the area as required by W.Va. Code State R. tit. 45 §§ 14-8 and 14-10; (3) perform an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the major modification as required by W.Va. Code State R. tit. 45 § 14-11; and (4) submit to West Virginia all information necessary to perform any analysis or make those determinations as required by W.Va. Code State R. tit. 45 §§ 14-6.2 and 14-6.5.

217. Based upon the foregoing, Defendants AEP Service Corp., Appalachian Power, and/or Ohio Power have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and W.Va. Code State R. tit. 45 § 14. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

218. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp., Appalachian Power, and Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation

occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

NINETEENTH CLAIM FOR RELIEF

(West Virginia SIP General Permit Requirements: Violations at the Philip Sporn Plant)

219. Paragraphs 1 through 129 and 215 through 218 are realleged and incorporated herein by reference.

220. At various times, AEP Service Corp., Appalachian Power, Ohio Power, and/or Central commenced construction or modification of a source, as defined in the West Virginia SIP, resulting in emissions increases of regulated pollutants at the Philip Sporn Plant. These modifications include, but are not limited to, the modifications described in paragraphs 215, above.

221. Defendants AEP Service Corp., Appalachian Power, and/or Ohio Power violated and continue to violate provisions of the West Virginia SIP Permit Requirements with regard to the identified modifications in paragraphs 215 above, by undertaking such modifications and operating its facility after the modifications without applying for and obtaining permits to construct and operate the modifications. W.Va. Code State R. tit. 45 § 13.

222. Based upon the foregoing, the AEP Service Corp., Appalachian Power, Ohio Power, and/or Central violated and continue to violate the West Virginia SIP provisions of W.Va. Code State R. tit. 45 § 13. Unless restrained by an order of this Court, these and similar violations of the West Virginia SIP will continue.

223. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, violations, as set forth above, subject Defendants AEP Service Corp., Appalachian Power, and/or Ohio Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such

violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TWENTIETH CLAIM FOR RELIEF  
(PSD Violations: Modifications at the Clinch River Plant)

224. Paragraphs 1 through 129 are realleged and incorporated herein by reference.

225. At various times, Defendants AEP Service Corp. and Appalachian commenced construction of major modifications, as defined in the Clean Air Act, at the Clinch River Plant. These major modifications included, but are not limited to the replacement of the primary, secondary, and reheat superheater banks and headers and associated casing and insulation for Units 1, 2 and 3 (CI# 12502) during approximately September to December 1995 (Unit 1), during approximately March to May 1997 (Unit 2), and during approximately August to November 1996 (Unit 3). Defendants AEP Service Corp. and Appalachian Power constructed additional major modifications to the Clinch River Plant beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following: NO<sub>x</sub> and SO<sub>2</sub>.

226. Defendants AEP Service Corp. and Appalachian Power violated and continue to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in 40 C.F.R. § 52.21 and incorporated into the U.S. EPA approved Virginia SIP at 40 C.F.R. § 52.2451, by, among other things, undertaking such major modifications and continuing to operate the facility without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1). In addition, Defendants AEP Service Corp. and Appalachian Power have not installed, and continue to fail to operate, BACT for control of NO<sub>x</sub> and SO<sub>2</sub>, as applicable, as required by 40 C.F.R. § 52.21(j).

Defendants AEP Service Corp. and Appalachian Power failed and continue to fail to: (1) demonstrate that the construction or modification would not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount as required by 40 C.F.R. § 52.21(k); (2) perform an analysis of ambient air quality in the area as required by 40 C.F.R. § 52.21(m); and (3) submit to Virginia or U.S. EPA all information necessary to perform any analysis or make those determinations required under 40 C.F.R. § 52.21 as required by 40 C.F.R. § 52.21(n).

227. Based upon the foregoing, Defendants AEP Service Corp. and Appalachian have violated and continue to violate Section 165(a) of the Act, 42 U.S.C. Section § 7475(a), and 40 C.F.R. § 52.21, which is part of the Virginia SIP. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

228. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants AEP Service Corp. and Appalachian Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### TWENTY-FIRST CLAIM FOR RELIEF

(Virginia SIP General Permit Requirements: Violations at the Clinch River Plant)

229. Paragraphs 1 through 129 and 225 through 228 are realleged and incorporated herein by reference.

230. At various times, Defendants AEP Service Corp. and Appalachian Power commenced construction or modifications of a source, as defined in the Virginia SIP General Permit Requirement,

resulting in potential emissions of 25 tons or more per year of regulated pollutants at the Clinch River Plant. These modifications include, but are not limited to, the modifications described in paragraph 225, above.

231. Defendants AEP Service Corp. and Appalachian Power violated and continue to violate provisions of the Virginia SIP General Permit Requirements with regard to the identified modifications in paragraph 225 above, by undertaking such modifications and operating its facility after the modifications without applying for and obtaining permits to construct and operate the modifications.

232. Based upon the foregoing, the Defendants AEP Service Corp. and Appalachian Power have violated and continue to violate the Virginia SIP General Permit provisions of 120-08-01. Unless restrained by an order of this Court, these and similar violations of the Virginia SIP will continue.

233. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, violations, as set forth above, subject Defendants AEP Service Corp. and Appalachian Power to injunctive relief and civil penalties of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 236 above, the United States of America requests that this Court:

1. Permanently enjoin each of the Defendants from operating all units at the Tanners Creek, Cardinal, Conesville, Muskingum River, John E. Amos, Kammer, Mitchell, Philip Sporn, and Clinch River Plants, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order each Defendant to remedy their past violations by, among other things, requiring Defendants to install and operate the best available control technology, lowest achievable emissions rate technology or best available technology, as appropriate, on the units at the Tanners Creek, Cardinal, Conesville, Muskingum River, John E. Amos, Kammer, Mitchell, Philip Sporn, and Clinch River Plants for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendants to apply for and comply with permits for their respective facilities that are in conformity with the requirements of the PSD provisions of the Act and the applicable SIP, the NSR provisions of the Act and applicable SIP provisions, and the general permit provisions of the applicable SIP;

4. Order Defendants to obtain, as appropriate, offsets pursuant to the NSR Nonattainment provisions;

5. Order Defendants to conduct audits of their operations to determine if additional modifications have occurred which would require them to meet applicable requirements of the Act or the applicable SIP and report the results of this audit to the United States;

6. Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

7. Assess a civil penalty against Defendants of up to \$25,000 per day for each violation occurring prior to January 30, 1997, up to \$27,500 per day for each such violation occurring between January 30, 1997 and March 15, 2004, and up to \$32,500 for each violation occurring after March 15, 2004;

8. Award Plaintiff its costs of this action; and,

9. Grant such other relief as the Court deems just and proper.

DATED: September 16, 2004

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

OF COUNSEL:

SABRINA ARGENTIERI  
KATHLEEN SCHNIEDERS  
Assistant Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604-3590

LESLIE B. BELLAS  
MARC BORODIN  
HEATHER BRUSER  
Trial Attorneys  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Phone: (202) 616-6515  
Facsimile: (202) 514-0097

GREGORY G. LOCKHART  
United States Attorney for the  
Southern District of Ohio

DONNA L. MASTRO  
DOUG SNYDER  
Assistant Regional Counsels  
Office of Regional Counsel  
U.S. EPA, Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029

MARK D'ALESSANDRO (0019877)  
Local Counsel  
Assistant United States Attorney  
280 North High Street, Fourth Floor  
Columbus, Ohio 43215  
Phone: (614) 469-5715  
Facsimile: (614) 469-5240

LESLIE BELLAS